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APR 19 2010

In re Application of	:	
Hertwig et al.	:	
Application No. 09/640729	:	
Filing or 371(c) Date: 08/17/2000	:	DECISION
Attorney Docket Number:	:	ON PETITION
853563.424	:	

OFFICE OF PETITIONS

This Decision is in response to the "Renewed Petition to Revive with Payment of Issue Fee," filed electronically on April 16, 2010.

The petition is **GRANTED**.

A review of Office records reveals that a final Office action was mailed on July 24, 2003. Applicants filed an Amendment after final on September 4, 2003. Office records then show that the application file was marked as lost on February 2, 2004, and marked found on November 12, 2004.

Also on November 12, 2004, the Office mailed a Notice of Allowance and Issue Fee Due, and Notice of Allowability. No response to the Notices of Allowance and Allowability having been received, the application became abandoned on February 13, 2005. A Notice of Abandonment was mailed May 4, 2005.

Applicant filed a "Request for Reconstruction of Lost File and PTO Action Relating to Applicant's Response After Final and, in the alternative, Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," on March 30, 2004. Accompanying the Petition to Revive the application was a Request for Continued Examination ("RCE") and a fee transmittal. Applicant included a copy of the documents, along with a copy of an Auto-Reply Facsimile Transmission acknowledging receipt by this Office of four pages on March 30, 2004. The petition and RCE included a Certificate of Transmission under 37 CFR 1.8 certifying to the their transmission to this office on March 30, 2004, executed by Mr. Shannon Lester; however, no statement from Mr. Lester attesting to the transmission of the documents has been included with the present petition.

The Request for Reconstruction of Lost File and PTO Action Relating to Applicant's Response After Final was treated as a petition under 37 CFR 1.181 (no fee) and dismissed in a Decision

mailed February 27, 2009, and a Decision on the petition to revive the application under 37 CFR 1.137(b) was held in abeyance. Applicant was requested to clarify whether the petition to revive the application and RCE and submission¹, which Applicants assert were filed because the status of the application was unclear, were necessary. A copy of the Notice of Allowance and Issue Fee Due were forwarded to Applicant

In response to the Decision dismissing the petition, Applicant files the present renewed petition to revive the application, and includes the issue and publication fees.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee and the publication fee (filed March 20, 2009); (2) the petition fee (filed December 11, 2008); and (3) a proper statement of unintentional delay (filed December 11, 2008).

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

This application is being referred to the Office of Data Management for processing into a patent.

/Derek L. Woods/

Derek L. Woods
Attorney
Office of Petitions

¹ A petition to revive the application for failure to pay the issue fee, along with the issue fee, were required to revive the application.